

SENATE BILL NO. 411

INTRODUCED BY B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE REGULATION OF OFF-PREMISES OUTDOOR ADVERTISING, INCLUDING REMOVAL AND RELOCATION BY ORDINANCE; PROVIDING FOR COMPENSATION OF OWNERS OF THE ADVERTISING AND OWNERS OF LAND ON WHICH THE ADVERTISING IS LOCATED IF THE ADVERTISING IS REMOVED; PROVIDING FOR ARBITRATION TO DETERMINE DISPUTES AS TO WHETHER A SITE OFFERED BY A LOCAL GOVERNING BODY IS COMPARABLE TO THE EXISTING SITE ON WHICH THE ADVERTISING IS LOCATED; AND PROVIDING THAT A DISTRICT COURT MAY AWARD ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN AN ACTION TO DETERMINE THE COMPENSATION AMOUNT FOR THE REMOVAL OF ADVERTISING."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) (a) "Legally placed" means that off-premises outdoor advertising was erected in compliance with state laws and local ordinances in effect at the time of erection or that was subsequently brought into compliance with state laws and local ordinances.

(b) The term does not apply to any off-premises outdoor advertising for which the use is modified after erection in a manner that causes it to become nonconforming.

(2) "Local governing body" means the legislative authority of a local government, by whatever name designated.

(3) "Local government" means any city, town, county, or consolidated city-county that has the authority to enact ordinances.

(4) "Off-premises outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard, or other thing that is designed, intended, or used to advertise or inform, that is situated in a manner to be visible from any highway or other traveled way, and that is located on property that is separate from and not adjoining the premises or property on which the advertised activity is carried out.

(5) "Ordinance" means an ordinance or resolution of the local governing body.

NEW SECTION. Section 2. Regulation of off-premises outdoor advertising by local governing

body. (1) A local governing body may regulate the use of off-premises outdoor advertising within its jurisdiction in accordance with the applicable provisions of [sections 1 through 6] including the authority to require the removal or relocation of any off-premises outdoor advertising that does not conform with any ordinance adopted by the local governing body that regulates off-premises outdoor advertising.

(2) The governing body of a county is specifically authorized by this section to adopt ordinances for the regulation, removal, and relocation of off-premises outdoor advertising.

NEW SECTION. Section 3. Compensation for removal or alteration of off-premises outdoor advertising -- court action to determine compensation amount. (1) (a) A local governing body may not remove or cause the removal or alteration of legally placed off-premises outdoor advertising without compensating the owner of the advertising that is removed or proposed to be removed or without reimbursing the owner of the advertising for the cost of the alteration.

(b) The compensation for the removal, proposed removal, or alteration of advertising must be in cash or other method of payment agreed to by the owner of the advertising.

(c) The owner of advertising that is removed or proposed to be removed must be compensated for the fair market value of the advertising and, if altered, the reasonable costs of the alteration.

(d) If the parties are unable to agree on the amount of compensation, either party may bring an action in district court for a determination of the amount of compensation that should be paid for the removal or alteration of the advertising. The district court may award attorney fees and costs to the prevailing party.

(2) A local governing body may not require the removal of legally placed off-premises outdoor advertising under the provisions of [sections 1 through 6] without fully compensating the owner of the land on which the advertising is located for losses that result from the termination of a lease or other financial agreement with the owner of the advertising. The owner of the land must also be compensated for damages to the property caused by the removal of the advertising.

(3) The requirement of a local governing body that legally placed off-premises outdoor advertising be removed or altered as a condition precedent to the continued approval of any use, structure, development, or activity that is other than off-premises outdoor advertising constitutes a compelled removal or alteration that is

subject to compensation as provided in subsection (1).

NEW SECTION. Section 4. Relocation and reconstruction of nonconforming off-premises outdoor advertising. (1) For the purposes of relocating and reconstructing nonconforming off-premises outdoor advertising, a local governing body may adopt a resolution or ordinance or modify its ordinances to provide for dimensional, spacing, setback, or other use variances that it considers necessary.

(2) A local governing body may not prohibit the repositioning of nonconforming off-premises outdoor advertising on the same parcel of land if the repositioning does not increase the degree of the advertising's nonconformance.

(3) Nonconforming off-premises outdoor advertising that is destroyed or damaged by a natural disaster may be rebuilt, at the owner's option, to its original height and size using similar materials.

(4) The provisions of [sections 1 through 6] may not be used to interpret, construe, alter, or otherwise modify the exercise of power of eminent domain by an entity pursuant to Title 70, chapter 30.

NEW SECTION. Section 5. Relocation and reconstruction agreements. (1) (a) In lieu of paying compensation for the removal of legally placed off-premises outdoor advertising as provided for in [section 3], a local governing body and the owner of the advertising may enter into a relocation and reconstruction agreement providing for the relocation of the advertising to a site that is comparable to the existing location.

(b) In determining if a proposed site is comparable to the existing location, the following factors, among others, should be considered:

- (i) the size and format of the advertising;
- (ii) visibility;
- (iii) zoning;
- (iv) availability and cost of leasing the new site; and
- (v) timing of the relocation.

(2) A local governing body is liable to pay the reasonable costs of the relocation and reconstruction of advertising under this section. The costs that must be reimbursed include:

- (a) the cost of removing the advertising;
- (b) the cost of any necessary repairs to the real property caused by removing the advertising;
- (c) the cost of installing the advertising at the new location; and

(d) if the owner of the advertising loses income for not being able to lease the advertising during the relocation, an amount equal to the lost lease income for a period of up to 30 days.

NEW SECTION. Section 6. Arbitration -- court action. (1) If a local governing body and the owner of off-premises outdoor advertising have entered into a relocation and reconstruction agreement and after 120 days the parties are unable to agree that any relocation site offered by the local government is comparable to the existing site, the parties shall submit to arbitration to determine if an offered site is comparable to the existing site.

(2) Each party shall select one arbitrator, and the two arbitrators shall select the third member of the arbitration panel. The rules of the American Arbitration Association apply unless the parties agree otherwise.

(3) If the arbitration panel determines that there is not an offered site that is comparable to the existing site and the local governing body elects to proceed with removing the advertising, the owner of the advertising must be compensated as provided in [section 3].

(4) If the parties are unable to agree on the amount of compensation within 30 days of the decision of the arbitration panel that there is not an offered site that is comparable to the existing site, either party may bring an action in district court for a determination of the amount of compensation that should be paid for the removal of the advertising. The district court may award attorney fees and costs to the prevailing party.

NEW SECTION. Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 75, chapter 15, and the provisions of Title 75, chapter 15, apply to [sections 1 through 6].

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